IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1413 OF 2007

Nandu Developers ...Petitioners

Versus

Kashinath P. Bhoir & Ors. ...Respondents

Shri K.K.Jadhav for the Petitioners.
Shri D.N.Salvi for the Respondent No.1.
Shri A.S.Rao for the Respondent Nos.2 and 3.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 03, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Petitioner is the first Defendant. By this Petition under Article 227 of the Constitution of India, the Petitioner has taken exception to judgment and order dated 23rd February, 2007 passed by the learned Additional District Judge in an Appeal preferred by the first Respondent herein. The first Respondent has filed a suit for declaration that the permission granted in favour of the Petitioner to construct a building is illegal. An Application for temporary injunction was made in the said suit by the first Respondent. The said Application was rejected. Being aggrieved by the said order, an Appeal was preferred before the District Court on which the impugned order dated 23rd January, 2007 has

been passed. By the impugned order the Petitioner has been restrained from using the FSI to the extent of two gunthas out of the FSI allowed to be used by the Municipal Corporation till the disposal of the suit. The order specifically clarifies that the Petitioner and other concerned Defendants are not restrained from continuing their construction by utilising the FSI relating to the portion to the extent of 27 gunthas.

2. After having heard the learned Advocates appearing for the parties, I find that the impugned order is passed on prima facie consideration of the material on record. The Petitioner has been permitted to utilise the FSI save and except the FSI relating to an area of two gunthas. In my view, the order impugned has been passed on equitable considerations which protects the interests of all the parties to the suit and no interference is called for in a Petition under Article 227 of the Constitution of India.

3. The learned counsel for the Petitioner states that the order impugned has been misinterpreted and misused by the parties to the suit. However, this is no ground to interfere. It is for the Petitioner to adopt

appropriate proceedings in that behalf.

4. Considering the facts and circumstances of the case, hearing of the suit deserves to be expedited.

5. Subject to what is observed above, the Writ Petition is rejected. The trial Court is directed to conclude the hearing of the suit as expeditiously as possible and preferably on or before 31st January, 2008. All contentions on merits of the suit are expressly kept open.

JUDGE